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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAMIAN ROMEL CORNELIOUS,

Defendant and Appellant.

B185758

(Los Angeles County
Super. Ct. No. BA252423)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Michael M. Johnson, Judge. Affirmed.

Susan K. Keiser, under appointment by the Court of Appeal, for Defendant
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Steven D.
Matthews and Adrian N. Tigmo, Deputy Attorneys General, for Plaintiff and
Respondent.

BACKGROUND

On September 21, 2004, appellant was convicted of the attempted murder of Faustino Rodriguez, as alleged in count 1 of the amended information filed September 7, 2004. In addition, he was convicted of assault with a deadly weapon upon Miguel Rodriguez by means likely to produce great bodily injury, as alleged in count 2, and misdemeanor battery upon Lorenzo Barreto, as alleged in count 3.

The information included special allegations. As to the attempted murder charged in count 1, it was alleged that the crime was willful, deliberate, and premeditated, that a principal personally and intentionally discharged a handgun, causing great bodily injury to the victim, and that appellant personally and intentionally discharged a handgun, causing great bodily injury to the victim. As to the assault charged in count 2, it was alleged that appellant personally used a handgun, and with regard to all three counts, it was alleged that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang, with the intent to promote, further, and assist in criminal conduct by gang members.

At trial, the victim of the assault with a firearm, Miguel Rodriguez, testified that he was the son of Faustino Rodriguez.¹ Miguel was working in his father's store on the day of the shooting, when he looked out the window and saw Lorenzo Barreto. Some Black men were attacking Barreto, kicking and hitting him, and one of the attackers was pointing a gun at him. Miguel testified that the man held the gun in his right hand. When he saw Miguel, he approached and hit him with the gun, causing a laceration above and behind his left ear. At that

¹ Because there are two victims named Rodriguez, we shall refer to them by their first names. There were other witnesses, and the briefs summarize their testimony in great detail. We shall summarize, however, only such testimony as is necessary to a discussion of appellant's assignment of error.

moment, Miguel's father, Faustino, emerged from his truck parked in front of the store and put his arms around Miguel's attacker, who broke loose and shot Faustino at close range. The shooter then left, a crowd gathered, and a green pickup truck drove away from the scene. More than six months later, Miguel picked appellant's photograph from a photo spread, and identified appellant in court as the shooter.

In a police interview, appellant admitted that he was at the scene of the shooting, but claimed that he was with a friend, Hadari Griffin, and that he stayed in his truck while Griffin went to buy something in the store. Appellant claimed that he heard a confrontation, got out of the truck, but got back in when he heard shots. Appellant denied that he had a gun, claiming that it was Griffin who had the gun, fought with Barreto, shot Faustino, and struck Miguel. He claimed that he was not involved, and that he did not know that Griffin had a gun or that he was the shooter until Griffin reentered the truck.

The jury found true the allegation in count 1, that a principal personally and intentionally discharged a handgun, causing great bodily injury to the victim. As to all other allegations, the jury was unable to reach a verdict, and a mistrial was declared as to those. On December 10, 2004, appellant entered into a plea bargain. The prosecution agreed not to retry appellant on the special allegations, and to request a sentence of 19 years in prison. In exchange, appellant admitted the allegation in count 1 that he personally used a firearm in the commission of the attempted murder, in violation of Penal Code section 12022.53, subdivision (b). The trial court vacated the verdict on the assault with a deadly weapon charge in count 2, which was dismissed and replaced by the prosecution's oral amendment of the information, charging appellant with assault with a firearm, adding the special

allegation that appellant personally used a firearm in the commission of the crime.² As amended, appellant pleaded guilty to count 2, and admitted the personal use of a firearm. There was no change to count 3.

Appellant was sentenced to 19 years in prison as agreed. The sentence consisted of the high term of nine years on count 1, pursuant to Penal Code section 664/187, with a consecutive sentence of 10 years for the gun allegation of count 1, pursuant to Penal Code section 12022.53, subdivision (b). As to count 2, appellant was sentenced to the midterm of three years on the underlying offense and the midterm of four years on the gun allegation, to run concurrently with the sentence on count 1. On count 3, appellant was sentenced to six months, also to run concurrently.

Appellant filed his notice of appeal September 9, 2005, and we subsequently granted relief from default, ordering the Los Angeles Superior Court to accept the notice of appeal and to consider appellant's application for a certificate of probable cause.³ A new notice of appeal was filed May 3, 2006, and on May 23, 2006, the trial court denied the certificate of probable cause.

DISCUSSION

Appellant makes a single assignment of error. He contends that the trial court erred in refusing his request to demonstrate his handwriting before the jury, in order to show that he was left-handed and thus was probably not the shooter, who held the gun in his right hand.

² See Penal Code sections 245 and 12022.5, subdivision (a). Appellant had been charged under section 245, subdivision (a)(1); the oral amendment substituted section 245, subdivision (a)(2), in its place.

³ See Penal Code section 1237.5.

Though raised by neither party, we observed that as part of his plea bargain, appellant admitted the special allegations that he personally used a firearm in the commission of the attempted murder of Faustino, and that he personally used a firearm in the commission of the assault upon Miguel. Because appellant's sole contention on appeal is that he was foreclosed from presenting evidence that would raise a reasonable doubt whether he was the shooter, we asked for additional briefing, addressing the effect of appellant's judicial admissions that he personally used a firearm on his right to raise evidentiary issues. In response, respondent urged for the first time that we dismiss the appeal under Penal Code section 1237.5.⁴ Appellant suggested the admissions had no effect on his right to raise evidentiary issues.

The judgment entered was based on: (a) a jury verdict convicting appellant of attempted murder as charged in count 1, (b) a guilty plea to an amended count 2, and (c) admissions to allegations of gun use as to both counts 1 and 2. The court expressly advised appellant that "[y]ou will not have a right to appeal."

There can be no doubt that the disposition itself was a "plea bargain" in which appellant received the deal he bargained for -- a 19-year sentence that avoided the prospect of a retrial and the potential of a much longer sentence. It is questionable whether appellant has any right to appeal.

Assuming *arguendo*, however, that he retained the right to challenge his underlying conviction on count 1, his admissions to having personally used a firearm in both the attempted murder and the assault effectively precludes any contention that he was not the shooter. By admitting the firearm enhancements on both counts 1 and 2, he admitted every element of the enhancements. (*People v.*

⁴ Penal Code section 1237.5 provides that no appeal may be taken from a judgment of conviction upon a plea of guilty, unless the defendant first obtains a certificate of probable cause for such appeal.

Bowie (1992) 11 Cal.App.4th 1263, 1266.) His admissions of the enhancements were a conclusive admission of guilt, which waived any right to raise evidentiary contentions. (*People v. Lobaugh* (1987) 188 Cal.App.3d 780, 785.)

Finally, we note that even had appellant preserved his right to raise evidentiary objections, his arguments fail on the merits. The court denied appellant's request to demonstrate that he was left-handed by allowing him to sign his name before the jury, but permitted appellant to call his grandmother, who testified that appellant was left-handed. There was no cross-examination.

Appellant argues that because he would have had no constitutional right to refuse to demonstrate his handwriting had the prosecution so requested, it follows that he had a constitutional right to present such evidence. To state the proposition is to reject it.

Equally untenable is appellant's contention that the exclusion of such evidence was of constitutional dimension because it deprived him of the right to present his defense. In fact, appellant was allowed to -- and did -- present evidence calling into question whether he was the shooter. His grandmother testified, without contradiction, that he had been left-handed from birth. He was able to show that four months after identifying appellant from a photo spread, Miguel was unable to identify appellant from a lineup. The defense offered expert testimony concerning the unreliability of eyewitness identification testimony, particularly after incidents involving a weapon and when the victim and perpetrator were of different races. In short, appellant had ample opportunity to present his "mistaken identity" defense, and we find no error in the trial court's exclusion of appellant's handwriting demonstration.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.